

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**WINN-DIXIE STORES, INC. and BI-LO
HOLDINGS, LLC,**

Plaintiffs,

v.

**EASTERN MUSHROOM MARKETING
COOPERATIVE, INC., *et al.*,**

Defendants.

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No. 5:15-cv-06480-BMS

**DEFENDANTS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AGAINST PLAINTIFF BI-LO HOLDINGS, LLC**

Undersigned Defendants hereby submit this statement of material facts in support of their Motion for Summary Judgment Against Plaintiff Bi-Lo Holdings, LLC (Bi-Lo).

1. During the period from 2000–2008, Bi-Lo purchased agaricus mushrooms exclusively from C&S Wholesale Grocers (C&S), which is not a defendant in this case, nor is it alleged to be a co-conspirator of the defendants. (Pls.' Resp. to Defs.' Conditionally Am. 1st Set of Interrogs. & Reqs. for Produc. of Docs. to Pls. Winn-Dixie & Bi-Lo at 9, attached to the Motion for Summary Judgment as Exhibit A.)

2. Bi-Lo asserts standing to maintain a damage claim against the defendants here because it has “an Assignment from C&S . . . covering antitrust claims arising out of [Bi-Lo's] purchases from C&S during the relevant time period.” (Ex. A at 9.) Bi-Lo relies upon a document entitled “Agreement for Assignment of Antitrust Claims,” dated June 28, 2019 between C&S and Bi-Lo, LLC dba Southeastern Grocers (referred to herein as the “Assignment,” attached to the Motion for Summary Judgment as Exhibit B).

3. The Assignment recites that Bi-Lo has purchased “all or a portion of its

requirements of certain . . . ‘Disputed Products’” from C&S, which products are “currently subject to one or more antitrust class action claims” listed on Schedule B to the Assignment. (Ex. B at 1.) The Assignment further recites that C&S “as the direct purchaser of the Disputed Products, ‘is a putative Class member in the Antitrust Class Actions’” listed on Schedule B. (*Id.*)

4. The Assignment defines “Antitrust Claim” to mean “C&S’s . . . interest in (and to) all claims and causes of action that C&S may have under the antitrust . . . laws . . . , arising out of or relating to C&S’s purchase of Disputed Products from any of the Defendants that C&S sold to [Bi-Lo] during the Relevant Time Periods referenced in Schedule B.” (*Id.* ¶ 3(a)).

5. The Assignment further clarifies that C&S retained “all antitrust or other legal claims arising out of, or pertaining to, Disputed Products not purchased by [Bi-Lo] from C&S, regardless of whether or not any such claims are asserted in any of the Antitrust Class Actions, or against a Defendant.” (*Id.* ¶ 9).

6. Neither the Complaint nor Amended Complaint in this action includes any reference to a claim owned by or brought on behalf of C&S or attributable to any purchases by C&S from a Defendant. (Docket Nos. 1 and 96 in this action).

7. On March 23, 2018, the Court approved Class Plaintiffs’ proposed forms of notice and their plan for the dissemination of notice of class certification to members of the class of direct purchasers. (Order, Mar. 13, 2018, No. 2:06-cv-00620-BMS, Docket No. 877). Rust Consulting, Inc. had also been approved as the Class and Settlement Notice Administrator by order of March 20, 2018 (Direct Purchaser Class Pls.’ Mot. to Appoint Rust Consulting, Inc. as Class & Settlement Notice Administrator, No. 2:06-cv-00620-BMS, Docket No. 876).

8. Rust Consulting, Inc. caused notice to be given in accord with this Order. The Form of Notice included the opt-out deadline of June 28, 2018. (No. 2:06-cv-00620-BMS, Docket No. 875-1 at 13; No. 2:06-cv-00620-BMS, Docket 875-2 at 5).

8. The only opt-outs from the class were Giant Eagle, Publix and Winn-Dixie. C&S did not opt out. (Tr. of Scheduling Conference Before the Honorable Berle M. Schiller, Sept. 24, 2018 at 7:1–3; Docket No. 901.).

9. At the time of the Assignment, C&S was not merely a “putative class member,” it was a member of the certified class that had not opted out within the time allowed.

10. All claims that had been held by C&S as a member of the certified class were dismissed with prejudice as part of the final approval of the class settlements. (Final J. & Order Granting Final Approval of Class Settlements & Dismissing Direct Purchaser Class Claims Against Settling Defs., No. 2:06-cv-00620-BMS, ECF No. 1088).

[signatures to follow]

Dated: May 12, 2020

Respectfully submitted,

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